

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GLEN EATON)	
Claimant)	
VS.)	
)	
COLEMAN CO.)	Docket No. 205,158
Respondent)	
AND)	
)	
CONTINENTAL CASUALTY)	
Insurance Carrier)	

ORDER

Respondent appeals from the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes wherein claimant was granted benefits in the form of medical treatment, temporary total disability compensation, and psychiatric care.

ISSUES

- (1) Whether claimant suffered accidental injury arising out of and in the course of his employment
- (2) Whether claimant's psychological problems stem from the alleged accident of May 2, 1995.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds that claimant has not proven by a preponderance of credible evidence that he suffered accidental injury arising out of and in the course of his employment with respondent on the date alleged.

On May 2, 1995, claimant was working in the Coleman factory when a battery, which was being recharged, exploded near him. The battery's distance from claimant at the time of the explosion has been estimated at anywhere from 10 feet to 19 feet. Claimant states he was unable to remember anything for approximately five or six minutes after the explosion. Claimant was examined by the plant nurse and no physical damage was found. Two days later claimant appeared at the emergency room of Wesley Hospital complaining of shortness of breath. He was diagnosed with possible bronchitis, provided antibiotics and improved with treatment. Claimant later began to develop additional symptoms including tremors, memory loss, ringing in his ears, sweating and shakiness, difficulty in ambulating, right hip problems, staggering, back pain, groin pain, right leg pain, and chest pain which was diagnosed as angina. Claimant also felt weak and fatigued and experienced symptoms of acute anxiety, depression, nausea, tremors in his head and neck and nightmares regarding his association with batteries.

Claimant has undergone treatment with a multitude of doctors including psychologists, chiropractors, psychiatrists, neurologists, radiologists, and general surgeons. During several of these examinations, claimant denied preexisting symptomatology, in particular, dealing with the ringing in his ears. It is noted that during hearing tests over a several year period, preceding claimant's date of accident, claimant was diagnosed with bilateral hearing loss and ringing in his ears. Claimant's shakes, described as being located in his head and neck and at times throughout his entire body, also preexisted the incident of May 2, 1995. Claimant currently has been diagnosed with post traumatic stress disorder, angina, post traumatic concussion syndrome, degenerative arthritis, post concussion syndrome, degenerative disc disease in the lumbar spine, pneumonia, bronchitis, allergic rhinitis, hypercholesterolemia, mild anemia, and experiences a multitude of symptoms all of which he alleges stem from the battery incident of May 2, 1995.

Claimant's history is significant in that he suffered a motorcycle accident in 1979 after which he was hospitalized for two to three weeks, suffered significant memory loss, experienced significant depression and suicidal tendencies, was diagnosed with amnesia, post injury concussion, mild cerebral disfunction, and post-injury tests indicated mildly abnormal EEG's on several occasions. He was also diagnosed as having organic brain syndrome, post accident and experienced a toxic drug reaction to codeine.

Claimant is currently being treated by Deborah G. Haynes, M.D., a family practice specialist in Wichita, Kansas. Dr. Haynes stated that claimant's ongoing symptomatology is related to the accident of May 2, 1995.

When dealing with traumatic neuroses or traumatic incidents in Kansas, the case law in Kansas is clear. A neurosis following a physical injury must be shown to be directly traceable to the injury in order to be compensable.

In Love v. McDonald's Restaurant, 13 Kan. App. 2d 397, 771 P.2d. 557 (1989), the Kansas Court of Appeals listed the required findings in order to establish a connection between a traumatic neurosis and a work-related injury. Love, in comparing prior case law, found that for a traumatic neurosis to be compensable, the claimant must (1) suffer a

physical injury; (2) have symptoms of traumatic neurosis; and (3) the symptoms must be directly traceable to the physical injury.

In this instance, a review of the volumes of medical records in the record fails to uncover a specific physical injury suffered by claimant on May 2, 1995. While claimant discusses a multitude of symptoms, it is significant that none of these symptoms originated from this specific injury. Even the hearing loss alleged by claimant to result from the explosion was shown to preexist claimant's alleged date of accident by many years. Audio grams performed by respondent as early as 1978 indicated a hearing loss bilaterally.

The court in Love found that traumatic neurosis, following and directly traceable to a work-related physical injury, is compensable. Conversely, absent a work-related physical injury, traumatic neurosis is not compensable.

As such, the Appeals Board finds for preliminary hearing purposes that the symptomatology experienced by claimant subsequent to the incident of May 2, 1995, does not satisfy claimant's burden of proving that he suffered an injury arising out of and in the course of his employment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated February 25, 1996, should be, and is hereby, reversed and claimant is denied benefits for the incident occurring on May 2, 1995.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Clifford K. Stubbs, Lenexa, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director